IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 31666 of 2005(T)

PETITIONER:

MRS.SHYLAJA RAJAN,
FORMERLY PROPRIETOR, CALICUT BEVERAGES,
PAYYOLI, MELADY, CALICUT, NOW RESIDING AT
DREAM LAND, MADDUNAKUNDI AT P.B.NO.21, GUNDLUPET,
KARNATAKA.

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
KOZHIKODE.

3. THE ASSISTANT COMMISSIONER(KOYILANDY
CIRCLE),
SALES TAX, KOZHIKODE.

4. THE ADDITIONAL SALES TAX OFFICER,
KOYILANDY, KOZHIKODE DISTRICT.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 31666/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER DATED 21/3/1996 IN CMP NO. 1483/96 IN W.A. NO.519/96 OF THIS HON'BLE COURT.

P2 : COPY OF THE ORDER DATED 03/04/1996 IN CMP NO.1730/96 IN W.A. NO. 519/96 OF THIS HON'BLE COURT.

P3 : COPY OF THE LETTER DATED 02/05/1996 OF THE PETITIONER ADDRESS TO THE 4TH RESSPONDENT.

P4 : COPY OF CERTIFICATE DATED 28/10/2005 AND BY THE SYNDICATE Bank, KOYILANDY.

P5 : COPY OF RECEIPT DATED 18/03/2000 GIVEN BY THE 4TH RESPONDENT FOR THE RECEIPT FOR RS.1,11,042/- FROM SURCHARGE ON INTEREST.

P6 : COPY OF CERTIFICATE DATED 04/04/2000 NO. 33161528/92-93/94-95 ISSUED BY THE 4TH RESPONDENT.

P7 : COPY OF JUDGMENT DATED 11/11/2004 IN WA NO. 519/96 OF THIS HON'BLE COURT.

P8 : COPY OF ORDER NO. P1/4731/94 DATED 13/7/2004 ISSUED BY THE 2ND RESPONDENT.

P9 : COPY OF ORDER OF 4TH RESPONDENT NO. 33161528/92-93 DATED 13/4/2005 ATTESTED BY SALES TAX OFFICER, QUILANDY DATED 03/10/2005.

P10 : COPY OF ORDER OF 4TH RESPONDENT 33161528/93-94 DATED 13/4/2005 ATTESTED BY SALES TAX OFFICER, QUILADY DATED 03/10/2005.

P11 : COPY OF REPRESENTATION DATED 13/10/2005 SUBMITTED BY THE PETITIONER ADDRESSED TO 3RD RESPONDENT.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 31666 of 2005 T

Dated, this the 29th day of March, 2007

J U D G M E N T

Prayer in the WP(C) is for direction for refund of sales tax already ordered pursuant to exemption granted to the petitioner. It is seen that exemption is granted only by virtue of Ext.P7 judgment of this Court passed on 11/11/2003 for several years. If the tax remitted by the petitioner is collected from customers, there is no provision for refund of the same to the petitioner. Tax collection will be disclosed from returns if not stated in bills. If petitioner has not collected tax and has remitted tax from margins, then petitioner is entitled to refund. On the other hand, if the tax paid is collected by the petitioner then refund can be claimed only by customers by filing Form 40 under Rule 31 D of the KGST Rules. In the circumstance, Officer is directed to consider petitioner's claim for refund of the tax, after verifying whether the said tax is collected or not. If tax remitted by the petitioner is collected, then it is to be forfeited under Sec. 46A(i) of the KGST Act and claim for refund should be considered on

application by customers. If tax remitted by the petitioner is not collected, then refund should be granted within one month from the date of production of a copy of this judgment.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg